

PLATRONICS COMMUNICATIONS

IBLA 96-411

Decided January 13, 1998

Appeal from a communications right-of-way grant made by the Barstow, California, Resource Area Manager, Bureau of Land Management. CACA 35148.

Affirmed.

1. Environmental Quality: Environmental Statements–Rights-of-Way: Generally–Rights-of-Way: Applications–Rights-of-Way: Federal Land Policy and Management Act of 1976

No error was shown in a grant of a communications right-of-way to a radio broadcast station based upon planning that took into consideration whether technical demands imposed on the radio operation permitted it to be located in existing facilities and analyzed the cost of letting bids for the right-of-way grant.

APPEARANCES: Lawrence A. McHenry, Esq., Phoenix, Arizona, for Platronics Communications; James H. French, Lancaster, California, for Antelope Broadcasting Company.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Platronics Communications (Platronics) has appealed from a May 6, 1996, communications right-of-way grant issued to Antelope Broadcasting Co., Inc. (Antelope), by the Barstow, California, Resource Area Manager, Bureau of Land Management (BLM). The communications site at issue, CACA 35148, is on Calico Peak, in BLM's California Desert District. Antelope's right-of-way grant is based on an Environmental Assessment (CA-068-EA96-23), Finding of No Significant Impact and Decision Record dated April 8, 1996.

Platronics also has a right-of-way grant at the Calico Peak location, CACA-13065, granted under provision of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761 (1994). As an existing user, Platronics participated in planning for additional communications users at Calico Peak. In the course of such planning, Platronics negotiated with Antelope in an attempt to rent part of the existing Platronics facility

to Antelope. After failing to reach an agreement with Antelope for space rental, Platronics protested issuance of a separate grant to Antelope, and now challenges BLM's grant to Antelope of a separate right-of-way site. The existing Platronics facility consists of a 40-square foot building, a 40-foot tower, and a photovoltaic array.

A principal argument made by Platronics on appeal to this Board is that issuance of the Antelope grant was contrary to a provision of the Calico Peak Communications Site Management Plan (Plan), approved by BLM's Acting District Manager on October 25, 1990, that encourages use of existing facilities by new users before issuance of new grants. (Statement of Reasons (SOR) at 13, 16.) Platronics also alleges that competitive bidding procedures for award of the site to Antelope should have been used and were omitted without explanation, (SOR at 9), that BLM erred when the grant was issued without completion of a "modulation study" to determine compatibility of the Antelope operation with existing users, (SOR at 19), and that Antelope's application did not include a required corporate qualification document, (SOR at 9).

The provision of the Plan said by Platronics to be violated by issuance of the Antelope grant provides that "[a] communication site right-of-way with subgranting rights shall be used to accommodate any future expansion at Calico Peak. Those new buildings authorized will be capable of housing multiple users. Whenever technically compatible, new site users will be required to locate in existing buildings." (Plan, Paragraph VI.G.)

Section 501(a) of FLPMA, 43 U.S.C. § 1761(a)(5) (1994), grants the Secretary of the Interior authority to issue communication rights-of-way on public lands. See also 43 U.S.C. § 1761(a)(7) (1994). Approval of rights-of-way is, generally, a matter of Departmental discretion. John M. Stout, 133 IBLA 321, 327-28 (1995), and cases cited. Such cases are evaluated to determine if the BLM decision is reasonable. Id. One seeking to show error in a grant of a right-of-way must show that the agency decision is unreasonable by a preponderance of the evidence. Stewart Hayduk, 133 IBLA 346, 354 (1995).

[1] Since the Plan's provision limits occupancy in common to users who are "technically compatible," Platronics must show that the existing Platronics facility was adequate for use by Antelope. According to Antelope, however, the Platronics building was not adequate, because Antelope's radio operations required a 100-foot tower in order to meet conditions imposed by the Antelope broadcast license. See letter dated Mar. 19, 1996, Gary to Angell. The SOR suggests Platronics tried to conform the existing building to Antelope's standards but failed to do so when BLM delayed action on applications to expand the existing Platronics facility. While it appears that expansion applications were made by Platronics in 1989 and 1994, neither application proposed construction of a 100-foot tower adequate to meet the need imposed by Antelope's license, the highest

tower proposed in either application being 80 feet. The Antelope application sought and obtained approval of a 100-foot tower. See Decision Record at 1. Given these facts, the argument that Antelope should or could have been accommodated in the Platronics facility must be rejected, because the Platronics site has not been shown to be compatible with Antelope's technical needs, as provided by the Plan.

Again citing the Plan, Platronics argues that BLM failed to explain why it did not advertise for bids before awarding the Antelope grant. The Plan provides, pertinently, that if "competitive bidding procedures are not used, reasons for such must be specified in the decision document." (Plan at 6.) An estimate of the cost to advertise for bids dated September 25, 1995, appears in the case file; it is calculated that use of bidding procedures for the Antelope site would cost \$6,345 and require 105 days to complete. A memorandum dated April 3, 1996, comments, referring to the September 25, 1995, cost estimate, that after considering "the cost of advertising and appraising the site under the rules at the time, we decided that the premium of bidding wouldn't cover the cost." Whether bids should have been solicited was considered in BLM's May 6, 1996, "decision document," as required by the Plan, wherein BLM found that

Antelope Broadcasting has established that their application is technically incompatible with the capabilities of existing multi[-]user sites, an appropriate site is available, and establishment of a radio broadcast station on Calico Peak under authority of the Federal Communications Commission is in the public interest. The site is identified as the "competitive site." Consideration of the cost to appraise, advertise and process bids led to the decision that the advantage to the Government of competition would be exceeded by the cost of advertising, and that the public interest would be best served by granting a multi-user site.

Platronics has neither alleged nor shown that this finding is in error; it is therefore affirmed.

Although Platronics argues that a needed corporate qualifications document is absent from the Antelope application, no citation to authority requiring submission of the so-called "good standing certificate" has been provided, and none has been found; in the absence of some showing how lack of such certification would affect Antelope's ability to perform under the grant issued by BLM, this argument also must be rejected. Similarly without apparent basis is the argument that BLM should have inspected Antelope's equipment to determine whether it would interfere with existing installations. The Plan provides, at paragraph VII.E.3., on page 10, under the heading Electronic Requirements, that "responsibility for correction of proximity interference shall lie with communications site occupants." No Departmental regulation is cited that requires BLM to oversee such activity, nor does Platronics allege that any equipment authorized by the Antelope grant will interfere with existing operations. This argument also is found to be without merit.

It is therefore concluded that no error has been shown in the issuance of FLPMA right-of-way CACA 35148 to Antelope. To the extent not otherwise directly addressed herein, all other arguments raised by Platronics have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the grant of right-of-way CACA 35148 is affirmed.

Franklin D. Arnese
Administrative Judge

I concur.

T. Britt Price
Administrative Judge

